

## Opinion No. 22-3375

April 11, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Hon. Merritt C. Mechem, Governor, Santa Fe, New Mexico.

**Funds for Payment National Guard Called Into Active Service.**

### OPINION

{\*142} In reply to your inquiry of even date herewith, requesting advice regarding the manner in which funds could be supplied for the transportation, payment and subsistence of the troops now at Gallup, permit me to say:

There is specific statutory authority for the payment of the National Guard when on duty in case of riot, tumult, breach of the peace, resistance to process or whenever called upon in aid of civil authorities. (Section 3883, Code 1915.)

The section above mentioned provides as follows:

"Compensation and the necessary expenses incurred in quartering, caring for, warning for duty, and transporting and subsisting the troops as well as the expense incurred for pay, care and subsistence of officers and enlisted men temporarily disabled in the line of duty while on such duty, as set forth in Section 3887, shall be paid by the State. The State Treasurer, upon the presentation to him of vouchers and pay rolls for such expenses and compensation, certified by the officers commanding such forces and approved by the Adjutant General, shall pay such vouchers and pay rolls out of any moneys in the state treasury not otherwise appropriated should the vouchers and pay rolls not exceed in amount the sum of five thousand dollars. If the vouchers and pay rolls for such service exceed the amount of five thousand dollars, then he shall forthwith execute in behalf of and in the name of the State a certificate or certificates of indebtedness for the money required to pay such vouchers and pay rolls; such certificates shall bear interest at the rate of not to exceed four per cent per annum and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of the State succeeding their issue and applied to the payment of such certificates. Said State Treasurer shall sell such certificates at public or private sale and apply the proceeds thereof to the payment of such expenses and compensation."

You will note from the foregoing quotation that there is ample machinery providing for the raising of funds necessary for the payment of the expenses connected with the calling out and sending of the National Guard to Gallup.

If the amount is five thousand dollars or less such expenses shall be paid by the treasurer out of any unappropriated funds in the { \*143 } treasury. If the amount is in excess of five thousand dollars, then the treasurer must issue the certificates as prescribed in the part of the section quoted.